

ORIGINAL

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

PR Docket No. 92-78

In the Matter of

Amendment of Part 90 of the  
Commission's Rules Pertaining  
to End User and Mobile Licensing  
Information.

RM-7407

RM-7749

#### NOTICE OF PROPOSED RULE MAKING

Adopted: April 9, 1992;

Released: May 5, 1992

Comment Date: June 26, 1992

Reply Comment Date: July 13, 1992

By the Commission:

#### I. INTRODUCTION

1. In this proceeding, we propose to eliminate or modify various rules that impose unnecessary regulatory burdens on private land mobile licensees. First, with regard to licensees of shared systems that do not individually license their end users, we propose to eliminate the requirement that licensees of such systems maintain and periodically furnish detailed information about their end users. Second, we propose to reduce the frequency with which *all* private land mobile licensees must file license modification applications when they increase or decrease the number of mobiles or pagers on their system. Finally, we propose that under certain circumstances, licensees should be permitted to file applications for license modification to reflect an

increase in the number of authorized mobiles or pagers directly with the Commission rather than through a frequency coordinator.

2. Section 90.179(e) of the Commission's Rules now requires that applicants for shared stations<sup>1</sup> submit with their applications the names, addresses, telephone numbers, nature of business or activity establishing eligibility, and contact persons for all system users or members, together with the number of mobiles and control stations each user will initially place into operation.<sup>2</sup> This rule also requires that the licensee submit to the applicable coordinator an updated list containing all of the above information -- including the number of mobiles and control stations each user or member employs -- eight months after grant, annually thereafter, and whenever the system's total mobile and control station count decreases by 20 percent from the licensee's current authorization. This submission is what is referred to as the "end user list."<sup>3</sup>

3. Section 90.135 of the Commission's Rules outlines the various changes in licensed facilities that now require the filing of license modifications.<sup>4</sup> Section 90.135(a)(5) mandates that a licensee modify its license when there is a change in the location or number of base stations, fixed, control or mobile transmitters from that authorized. Section 90.135(a)(5) also requires license modification if there is a change in the area of mobile operations. We are also concerned with Section 90.135(a)(8) of the Rules, which requires license modification when there is a change by 50 or more units in the number of authorized paging receivers.<sup>5</sup>

4. Sections 90.175 and 90.159 specify our frequency coordination and temporary licensing procedures. Currently, we require licensees of stations below 470 MHz to obtain frequency coordination when they are adding mobiles to their facilities, even where there is no change in the station's technical parameters.<sup>6</sup> The licensee may obtain temporary authority to operate these additional mobiles for 180 days upon filing a properly executed temporary license certificate together with evidence of frequency coordination.<sup>7</sup>

5. We have reviewed the above-mentioned provisions of our Rules, and have found that the public interest might best be served by taking a less burdensome approach to

<sup>1</sup> See 47 C.F.R. § 90.179(e). A station is considered shared when users not licensed to operate a base station remotely operate the base station for their own purposes pursuant to the base station licensee's authorization. 47 C.F.R. § 90.179. See also *Telocator Network of America v. FCC*, 761 F.2d 763 (D.C. Cir. 1985).

<sup>2</sup> Section 90.179(e) was adopted in 1983. See Memorandum Opinion and Order, PR Docket No. 18921, 48 Fed. Reg. 26620 (1983). At that time, we only required that a licensee keep an up-to-date list of persons who are sharing the station and the basis of their eligibility under Part 90 of the rules. In 1986, however, we modified our frequency coordination procedures and certified various entities as exclusive coordinators for their designated radio services. Report and Order, PR Docket No. 83-737, 103 FCC 2d 1092 (1986). On reconsideration of that action, we amended 47 C.F.R. § 90.179(e) to require the current "end user" submissions. Memorandum Opinion and Order, PR Docket No. 83-737, 51 Fed. Reg. 36013 (1986).

<sup>3</sup> Under the frequency coordination procedures established in 1986, frequency coordinators were given the responsibility to assist us with the enforcement of our Rules, including verifying

the accuracy of the end user information. See Memorandum Order and Opinion, PR Docket No. 83-737, 51 Fed. Reg. 36013, paras. 35-42.

<sup>4</sup> Section 90.135 is different from Section 90.179 in that the latter rule provisions only apply to shared systems.

<sup>5</sup> Section 90.135(a)(8) of the Rules was adopted in 1986 in the Memorandum Opinion and Order in PR Docket No. 83-737, 51 Fed. Reg. 36013, paras. 28-32 (1986). The Commission concluded, at that time, that changes in pager count should be reflected in our licensing records. Modification to a license authorization for a small change in the number of pagers, however, was thought to be an unnecessary burden for licensees. Therefore, we provided a benchmark figure of 50 units -- that is, either an increase or decrease of 50 paging receivers -- to trigger license modification. Memorandum Opinion and Order, 51 Fed. Reg. 36013, para. 32.

<sup>6</sup> Changes in a station's authorized frequency, type of emission, power, antenna height or area of mobile operation constitute changes in technical parameters. See 47 C.F.R. § 90.135 (1)-(5).

<sup>7</sup> 47 C.F.R. § 90.159(a).

resolving the regulatory issues these Rules present. Accordingly, we propose to modify, or in certain instances, eliminate these regulatory burdens, as described below.

## II. BACKGROUND

6. Our rules permit sharing of licensed facilities among eligible users on either a not-for-profit, cost-shared basis or a for-profit private carrier basis.<sup>8</sup> The end users sharing a system may choose either to be individually licensed or may opt for an arrangement where only a base station licensee obtains all required authorizations, including those necessary to operate mobiles on the system.<sup>9</sup> In the latter situation, as exemplified by private carriers below 800 MHz or non-profit cooperative systems above and below 800 MHz,<sup>10</sup> the base station licensee is responsible for proper use of the system by eligible end users.<sup>11</sup>

7. *Petitions for Rule Making.* A Petition for Rule Making was filed by Bakersfield Communications Corporation, Columbia Communications, Inc., Communications Center, Inc., Communications Ventures, Inc., Kentec Communications, Inc., Madera Radio Dispatch, Inc., Mobile Communications, Inc., Nu-Page of Winder, Paging Plus, and Tri-City Beepers, Inc. requesting modification of Section 90.179(e).<sup>12</sup> The Petitioners ask the Commission to require frequency coordinators to treat end user lists as proprietary and confidential because the lists are essentially compilations of each private carrier's customers.<sup>13</sup>

8. On June 6, 1991, the National Association of Business and Educational Radio, Inc. (NABER)<sup>14</sup> filed a Petition for Rule Making requesting amendment of 47 C.F.R. § 90.135(a)(8).<sup>15</sup> NABER seeks the exemption of Private Carrier Paging Systems (PCPs) from the Commission's requirement that paging systems modify their licenses whenever the number of their pagers increases or decreases by 50 units. The petitioner submits that as this threshold is reached in very short periods of time, the rule, in effect, requires constant license modification.<sup>16</sup> Therefore, it asserts, 47 C.F.R. § 90.135(a)(8) is burdensome on licensees, as well as wasteful of the Commission's resources.<sup>17</sup>

<sup>8</sup> See generally, 47 C.F.R. § 90.179.

<sup>9</sup> 47 C.F.R. § 90.179(c).

<sup>10</sup> Above 800 MHz only Specialized Mobile Radio (SMR) systems are permitted to engage in for-profit sharing, and each end user must be individually licensed. See 47 C.F.R. § 90.655. SMR licensees are not required to file end user lists because their end users are individually licensed. *Cf.*, Amendment of Part 90 of the Commission's Rules to Discontinue Licensing of End Users of Specialized Mobile Radio Systems, PR Docket No. 92-79, FCC No. 92-172 adopted April 9, 1992, where we propose to eliminate individual licensing for SMR end users.

<sup>11</sup> 47 C.F.R. § 90.179(b).

<sup>12</sup> Petition for Rule Making (End User Petition), RM-7407, filed May 6, 1990, Public Notice No. 3838, released July 2, 1990.

<sup>13</sup> A Petition for Rule Making similar to RM-7407 was filed on October 24, 1989, by the law firm of Brown and Schwaninger on its own behalf. This Petition was dismissed by the Chief of the Private Radio Bureau in correspondence dated January 29, 1990, as not satisfying the requirements set forth in 47 C.F.R. § 1.401. In finding the Petition to be speculative in nature and lacking sufficient data or documentation to support the proposed amendment, the Bureau dismissed it without prejudice. In correspondence to that effect, the Bureau reiterated the Commission's policy that frequency coordinators are to make

## III. DISCUSSION

9. The specific issue of whether the information provided in the end user list is proprietary was addressed in response to the filing of an earlier Petition for Rule Making.<sup>18</sup> As the Chief, Private Radio Bureau, stated in responding to that Petition, this information may be used by coordinators only for frequency coordination purposes. The new Petitions, however, prompt us to examine the broader issue of what type of end user information is needed by the Commission and frequency coordinators where a system's end users are not individually licensed. Is there current need for applicants or licensees to submit end user lists to either the Commission or frequency coordinators? Should licensees be obligated to maintain end user lists in their station records? Do our license modification rules, which apply to *all* licensees, adequately and clearly meet the needs of both the Commission and the coordinator for a reliable assessment of channel usage? These are the issues that we will address in the following discussion. The proposals we adopt are intended to eliminate unnecessary regulatory burdens on the land mobile industry by keeping end user submissions to the minimum required to maintain effective spectrum management.

### End User List Petition

10. *Petitions.* The End User Petition asserts that frequency coordinators are under no obligation to safeguard end user information.<sup>19</sup> The petitioners further contend that substantial resources are expended to cultivate and maintain a customer base.<sup>20</sup> Therefore, they see a need to protect customer lists to prevent unfair competition that could result if competitors were to obtain such lists from coordinators and then target the customers for their own benefit.<sup>21</sup>

11. *Comments.* The few commenters opposing the End User Petition<sup>22</sup> believe that amendment of 47 C.F.R. § 90.179(e) is not necessary as adequate remedies for those injured through disclosure of proprietary information al-

use of private carrier customer lists only for coordination purposes. See Letter from Ralph A. Haller to Messrs. Brown and Schwaninger (Jan. 29, 1990).

<sup>14</sup> Petitioner is the Association for Private Carrier Paging Section of NABER.

<sup>15</sup> Petition for Rule Making (License Modification Petition), RM-7749, filed June 6, 1991, Public Notice No. 1850, released June 24, 1991.

<sup>16</sup> License Modification Petition at 4.

<sup>17</sup> License Modification Petition at 5.

<sup>18</sup> See note 13, *supra*.

<sup>19</sup> End User Petition at 5. The Petitioners note that some frequency coordinators charge licensees a fee for submitting end user data regardless of whether the frequency coordinators make any use of the information. End User Petition at 11.

<sup>20</sup> End User Petition at 4.

<sup>21</sup> End User Petition at 3-5.

<sup>22</sup> Commenters opposing the End User Petition are several certified frequency coordinators, Forest Industries Telecommunications (FIT), Association of American Railroads (AAR), and NABER. No comments in support of the proposal or reply comments to the oppositions have been filed. Two of NABER members, responding to the License Modification Petition, agree that customer information contained in the end user list is

ready exist,<sup>23</sup> and the information is not routinely given out by frequency coordinators.<sup>24</sup> NABER submits, however, that applicants may need to review the customer lists in order to resolve disputes concerning the number of users which another private carrier claims to have on its system.<sup>25</sup>

12. Commenters also assert that the End User Petition will not achieve its desired effect because, they claim, any party may acquire, directly from the Commission, any information that has been filed with the Commission.<sup>26</sup> NABER, FIT and AAR contend that the perceived problem is speculative and question whether private carrier customer lists should be considered confidential.<sup>27</sup> In particular, AAR believes that the benefit of keeping the information available to the public to allow for confirmation of the accuracy of data overrides the interest of licensees in keeping that information from the public.<sup>28</sup>

### Proposals

13. *Need for the Initial End User Lists by the Commission.* A governmental regulation that is unnecessary cannot be justified.<sup>29</sup> Section 90.179(e) requires applicants for shared private land mobile radio systems to file end user lists with the Commission as part of their radio station applications. Upon grant of a license, there is no further obligation to submit an updated end user list to the Commission. Because the customer base is likely to be only in the developmental stage at the application phase, however, we have not found that the end user list provides either reliable or meaningful information. Further, this information is not routinely used by the Bureau's licensing staff.<sup>30</sup> In view of our tentative conclusion that the end user list serves no useful administrative purpose in processing and licensing private land mobile radio systems, we invite comment on whether we should eliminate the requirement that applicants submit end user lists to the Commission with their applications.

obviously proprietary, and it is imperative to safeguard its confidentiality. Paging Network, Inc. (PageNet) Comments at 4 and Celpage, Inc. (Celpage) Comments at 10-11.

<sup>23</sup> NABER cites Commission correspondence of January 29, 1990, a copy of which was sent to all certified frequency coordinators, in which the Bureau noted that to the extent that information provided to the frequency coordinators was misused, private carriers have a cause of action and adequate remedy in the courts. See NABER Comments at 3.

<sup>24</sup> See NABER Comments at 6.

<sup>25</sup> NABER Comments at 5. NABER also analogizes to the availability of end user information on SMR systems for its assertion that end user information provided pursuant to § 90.179(e) should not be proprietary. In this context, however, NABER fails to take into account the fact that SMR end users are individually licensed and, therefore, burdensome research would be necessary to garner all the pertinent data for SMR customers in contrast to the ready availability of this information in "list" form pursuant to § 90.179(e). Moreover, the Commission has proposed to eliminate individual licensing of SMR end users. Consequently, our proposal contemplates that such SMR end user information would no longer be part of the Commission's licensing records. See Amendment of Part 90 of the Commission's Rules to Discontinue Licensing of End users of Specialized Mobile Radio Systems, PR Docket No. 92-79, FCC No. 92172, adopted April 9, 1992.

<sup>26</sup> NABER Comments at 5. See 5 U.S.C. § 552 and 47 C.F.R. § 0.461.

14. *Need for End User Lists by the Coordinators.* Section 90.179(e) was amended in 1986 to meet concerns regarding the integrity of coordinator data-bases and to assure that their databases reflect actual use of systems.<sup>31</sup> A change in the number of mobiles or control stations that occurs anytime during the year, however, other than exactly when the annual submission is required, might not be reflected until many months after it occurs. The only change that requires the submission of a new end user list before the annual filing date is a 20 percent decrease in the number of mobile or control stations. Therefore, except at the exact time of filing, the end user list fails to reflect any increases in the number of mobiles and control stations, or decreases in these numbers of less than 20 percent.<sup>32</sup> Consequently, the information provided in the end user list will not generally assure the accuracy of the coordinators' data base.

15. We currently have less burdensome and more reliable means of acquiring up-to-date and accurate information on channel usage. Section 90.135(a)(5) of our Rules requires that all licensees must modify their licenses upon any change in the number of base stations, or fixed, control or mobile transmitters from that authorized.<sup>33</sup> The Private Radio Bureau's licensing staff provides the coordinators with copies of modified licenses for those radio services in which they coordinate frequencies. Consequently, coordinators already obtain current end user information.<sup>34</sup> Thus, even with the proposed changes, coordinators will have the necessary information on channel usage to enable them to recommend channels below 470 MHz, all of which are shared channels, and to ensure that spectrum above 470 MHz is not licensed for exclusive use based on inaccurate mobile loading information.

16. Another reason we adopted the end user list requirement was to enable coordinators to assist us in the enforcement of our rules by verifying the accuracy of end user information.<sup>35</sup> In no instances, however, have we received information from coordinators regarding inaccurate end user information. Furthermore, we are unaware of any

<sup>27</sup> NABER Comments at 6, FIT Comments at 2, and AAR Comments at 2.

<sup>28</sup> AAR Comments at 2-3.

<sup>29</sup> Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir.), cert. denied, 435 U.S. 829 (1977).

<sup>30</sup> Occasionally, this information is used to confirm that applicants planning to operate as non-profit cooperatives at 800 MHz are truly cooperatives and that the number of frequencies they request is not overstated.

<sup>31</sup> See para. 2 *supra*.

<sup>32</sup> Not only is it unclear whether licensees are submitting end user lists to coordinators on an annual basis, but we have no mechanism for assuring compliance with this aspect of Section 90.179(e).

<sup>33</sup> Even though we are proposing to modify Section 90.135(a)(5) to limit the extent to which the licensee must report these changes, we find that under our proposed rules we would have sufficient information for our regulatory purposes.

<sup>34</sup> Any change in the number of mobiles, even one, by private land mobile systems, and a change of fifty pagers by paging systems, operating pursuant to Part 90 requires license modification. Because we believe these requirements are unnecessarily burdensome, we are proposing to modify 47 C.F.R. § 90.135(a)(5) and (a)(8) to reduce the frequency with which licenses must be modified when the number of mobiles has changed. See paras. 19-30 *infra*.

<sup>35</sup> See note 3 *supra*.

specific instances in which coordinators have used customer data themselves to resolve questions regarding eligibility, loading, or compatibility of users of shared spectrum. Compliance actions are typically instituted in response to complaints filed directly with the Commission.<sup>36</sup> All licensees are responsible for compliance with all of the Commission's Rules, including the requirement that they share their licensed facilities only with eligible users. We can fulfill our compliance functions to assure customer eligibility by following our current practice of merely requesting customers' names and addresses from applicants and licensees in the event that a compliance action is instituted.

17. Regarding the confidentiality of end user information, in adopting the requirement in 47 C.F.R. § 90.179(e), we did not envision, as NABER suggests, that coordinators would provide end user lists to new applicants who dispute the number of end users on a particular private carrier's system. The end user list was intended for submission to coordinators for their own use, *i.e.*, to fulfill their coordination functions, and not as a means for providing customer data to third parties. Eliminating the end user list requirement would thus have the added benefit of avoiding the potential for infringement of customer data confidentiality.

18. We tentatively conclude that end user lists are not essential to the coordinators' functions, nor is end user information useful to the Commission's licensing processes. Moreover, the coordinators already obtain necessary channel occupancy information through the license modification process. We therefore propose to eliminate all requirements that end user lists be submitted to the Commission as part of the application process or subsequently to coordinators, and request comment on whether there are public interest considerations that outweigh our assessment that the regulatory burden imposed by end user submissions is unjustified. Furthermore, although we propose to eliminate the end user list requirement, licensees are reminded that in the event that this proposal is adopted, we can and will request end user information from licensees in order to confirm eligibility.

#### License Modification Petition

19. *Petition.* NABER contends that the Commission did not intend the requirement in § 90.135(a)(8), mandating license modification whenever there is a change in 50 paging receivers, to apply to paging-only channels. Petitioner asserts that, as PCPs normally maintain thousands of units, on paging-only frequencies, a change of 50 units

does not significantly affect channel utilization,<sup>37</sup> nor will a mere increase in 50 units by a PCP licensee affect future frequency recommendations. NABER requests that we require PCPs on paging-only channels to file what essentially is an "end user paging" list in lieu of the current license modification requirements of Section 90.135(a)(8) by: (1) requiring PCPs to submit to the coordinator only a certified list of paging units by type (tone, tone/voice, digital) eight months after grant and annually thereafter; and (2) specifically exempting private carrier systems operating on paging-only frequencies from the requirements of Section 90.135(a)(8).<sup>38</sup>

20. *Comments.* The three commenters responding to this Petition<sup>39</sup> support the request for elimination of the license modification requirements as they relate to PCP licensees because of the tremendous regulatory and economic burden of the current rule.<sup>40</sup>

21. *License Modification Requirements for Paging Systems.* We agree with petitioner and commenters that the 50 unit threshold is not appropriate, especially for certain paging systems. Channel occupancy on paging-only channels is significantly different than on two-way channels. For paging-only operations, where transmissions are very brief, channels can sustain a much higher number of pagers yet still maintain service quality. As commenters note, private carrier systems providing only paging services may add hundreds of units per week.<sup>41</sup>

22. NABER's suggestion concerning systems operating on paging-only systems, however, would be no less burdensome and costly to licensees than our current license modification rules. Furthermore, only the coordinator would receive the information under NABER's guidelines, and it is not evident why the coordinator needs this information or what purpose it would serve. We believe license modification requirements are the best vehicle to gather this data by the least burdensome method. We propose therefore to require systems operating on paging-only channels to modify their licenses when the number of pagers increases or decreases by 35 percent. We invite comment on whether this approach would provide us with adequate information to ensure a current data base while relieving licensees operating on paging-only channels of unnecessarily burdensome record-keeping obligations.

23. We further observe that once an applicant for a paging-only channel obtains a license, we essentially authorize them to add paging units on a continuing basis. A paging system ceases to become licensed for additional units only when the licensee makes the judgment that additional paging units would cause system users to receive

<sup>36</sup> See, e.g., Paul Kelley d/b/a American Teltronix, Second Memorandum Opinion and Order, 5 FCC Rcd 1955 (1990).

<sup>37</sup> License Modification Petition at 4.

<sup>38</sup> NABER's original proposal assumes that as PCP licensees are currently required by Section 90.179(e) to submit an end user list to coordinators on an annual basis, the coordinator is already in possession of the information which is needed to properly assess channel loading. In response to comments faulting this assertion, NABER, in its reply, retracts this contention, but maintains that only 900 MHz PCPs are exempt from submitting end user lists. See NABER Reply Comments at 4-5. Consequently, NABER also seeks amendment of Subpart P to authorize private carrier paging operations on Business Radio Service frequencies below 800 MHz, thereby extending the exemption from the end user list requirement to paging operations in the lower bands. See NABER Reply Comments at 5-6.

NABER's analysis of Section 90.179 is incorrect. The only relevant question regarding the applicability of § 90.179(e) is whether a system is *shared*, that is whether persons not licensed for the transmitter are able to activate the transmitter for their own purposes pursuant to the licensee's authorization. We further observe that private carrier paging systems have long been authorized on frequencies below 800 MHz, and it is well established that the majority of such systems are *not* shared, and thus not required to submit end user lists. See Paul Kelly d/b/a American Teltronix Licensee of Station WNHM552, Second Memorandum Opinion and Order, 5 FCC Rcd 1955 (1990).

<sup>39</sup> Commenters replying to this Petition are PCPs, O'Brien Communications, Inc. (O'Brien), Celpage and PageNet.

<sup>40</sup> See O'Brien Comments at 4.

<sup>41</sup> See PageNet Comments at 3.

an unacceptable grade of service. Given that it is our current practice to uniformly grant applications to add paging units, in the alternative, we also ask whether there is any need, after the initial licensing of systems on paging-only channels, for a modification of a system's license to authorize a change in the number of paging units.

24. *Signalling Standard for Systems Operating on Paging-Only Channels.* For systems licensed on paging-only channels, the actual number of pagers often provides an incomplete picture of channel use.<sup>42</sup> As such systems do not operate on exclusive channels, multiple co-channel operations result. Due to diverse operational modes, they use differing amounts of air-time. For example, digital paging systems capable of operating at relatively high bit rates occupy channels for a much shorter period of time than older analog systems that generally transmit at slower speeds. Thus, a 35 percent change in the number of users receiving non-digital signals might significantly affect channel occupancy while a similar change in the number of users receiving digital signals may not. Therefore, rather than requiring licensees merely to indicate the changes in the number of users, a better approach might be to establish some measure of channel occupancy that would take into account both numbers of users and the amount of time each user is on a channel.<sup>43</sup>

25. If a measurement could be established incorporating both the number of users and the time used, licensees might then be required to notify us when a certain percentage change in this occupancy figure occurs. In this context, we also ask whether we should impose technical restrictions on paging transmissions that would reduce channel occupancy time. In other words, should we immediately mandate (or phase in over time) an "average" or "median" transmission length that would require licensees to either increase the percentage of short-duration digital transmissions or increase the data rate of the digital transmission. Such a requirement could, in effect, exclude certain types of transmissions, but might well promote more efficient use of the spectrum. Commenters should address all these issues.

26. *License Modification Requirements for Other Part 90 Licensees.* In furtherance of our goal to reduce regulatory burdens on our licensees while maintaining an adequate database, we also propose to change the license modification requirements for private land mobile systems that are not licensed on paging-only channels. As mentioned above, under the current rule, 47 C.F.R. § 90.135(a)(5), any change in the number of mobile transmitters (even one) requires license modification.<sup>44</sup> We do not believe

that all licensees are complying with this rule and, furthermore, we question whether there is any valid reason for the Commission to seek such compliance. This requirement seems unduly burdensome both to the Commission and to our licensees. We have no regulatory need to be informed every time a system increases or decreases by one or two mobiles.

27. Thus, with the exception of licensees of systems operating on paging-only channels, we propose that all licensees be required to modify their licenses only when their number of mobiles increases or decreases by 20 percent from that authorized. We believe this represents a significant change in operation warranting modification of the Commission's and coordinator's data base. In order to maintain the integrity of our licensing records, we will, however, continue to require licensees of systems in the 470-512 MHz band and licensees of conventional 800 MHz systems to modify their licenses in accordance with our existing requirement until the channel has achieved exclusivity.<sup>45</sup> The 20 percent benchmark, rather than a 35 percent threshold as proposed for systems operating on paging-only channels, because the change in the number of mobile units for most private land mobile systems on two-way channels occurs less frequently than changes in the number of pagers for systems on paging-only frequencies.<sup>46</sup> This simplified license modification process will both relieve a regulatory burden and fully replace the end user list by providing the coordinators and the Commission with current channel occupancy information on which to base new licensing decisions. We invite comment on whether the benchmark figure of 20 percent is an appropriate one. Additionally, comment is sought on whether the 20% benchmark figure also should apply to two-way systems with paging receivers. How do we reconcile a change in the number of pagers with a change in the number of mobiles on a two-way system? Finally, interested parties should address whether, as an alternative, a change in the number of mobile units or pagers need only be authorized at the time of license renewal. That is, can a need be demonstrated for information on mobile units, or for authorization of mobile units, between a system's initial licensing and license renewal?

28. *Frequency Coordination Requirements for Mobile Licensing.* Currently, license modification to change the number of mobiles or pagers on a system requires frequency coordination when the underlying system is not operating on an exclusive assignment.<sup>47</sup> A frequency coordinator essentially does not make a frequency recommendation in this situation, however, because adding

<sup>42</sup> Although NABER suggests that PCP systems certify the number of paging units in service by type (e.g., tone only, tone/voice and digital), it does not indicate how information about the number and type of pagers gives a uniform measure of channel occupancy. See NABER Reply Comments at 5-6.

<sup>43</sup> This concept is similar to the objective need standard applied to existing two-way systems in the Public Mobile Service that seek additional channels. See, generally 47 C.F.R. § 22.16.

<sup>44</sup> Section 90.127 (c)(2) requires license applicants to request the number of authorized mobile transmitters "... for which purchase orders have already been signed and which will be in use within eight months of the authorization date." In practice, many private land mobile licensees read Section 90.135(a)(5) together with this rule as a requirement that they merely project the number of mobiles required during the upcoming eight months, rather than modify their license each time a new

mobile transmitter is placed in operation.

<sup>45</sup> Most private land mobile assignments are designated for exclusive use of a single licensee or for use by numerous co-channel users. Assignments in the 470-512 MHz band and conventional 800 MHz systems are licensed on the basis of "earned exclusivity," where we cease to license additional co-channel users for a particular assignment once a certain level of mobile loading is achieved. See 47 C.F.R. §§ 90.313 and 90.621(a)(2).

<sup>46</sup> See Report and Order in PR Docket No. 89-45, 6 FCC Rcd 542, para. 10 (1991), in which the Commission noted that paging-only channels generally have a greater capability than two-way channels to accommodate additional users. See also License Modification Petition at 4, PageNet Comments at 3, Celpage Comments at 3 and O'Brien Comments at 4 for statements to the same effect.

<sup>47</sup> See 47 C.F.R. § 90.175(f)(10).

another end user does not change a system's technical parameters. In fact, the vast majority of such grants are done pursuant to the temporary licensing provisions of 47 C.F.R. § 90.159(a).<sup>48</sup> Such applicants receive "on-the-spot coordination" (usually via telephone). It is questionable whether, in such instances, coordinators have ever rejected a requested increase in the number of mobile units or pagers.

29. Because no coordination activity occurs when a license modification is sought strictly for an increase in a system's number of mobiles or pagers, we ask whether applicants should continue to be required to comply with the regulation that they submit such applications to coordinators. The rationale for eliminating unnecessary application procedures whenever a licensee desires to add new users is the same for shared systems with individually licensed end users as for shared systems where users are not individually licensed. We also believe that conventional PCPs, although generally not shared systems, would also benefit from such a simplified coordination procedure. We question, therefore, whether frequency coordination, when there is only an increase in the number of mobiles or pagers, is necessary in these various situations.

30. It would appear that a more expeditious procedure would be to allow licensees of all systems to file their applications for license modification for an increase in the number of authorized mobiles or pagers directly with the Commission, provided the system's technical parameters remain unchanged. Temporary licensing of add-on mobile stations or pagers would continue to be available to licensees, but on the basis of filing an application for temporary licensing directly with the Commission. Coordination, however, is necessary when there is an increase in the number of mobiles for systems operating in the 470-512 MHz band or on conventional channels at 800 MHz, where exclusivity may be earned based on numbers of mobiles on a system. Therefore, applications for license modification requesting an increase in the number of mobiles authorized in the above-mentioned frequency bands should continue to be sent to the relevant frequency coordinator for coordination before the application is forwarded to the Commission until the channel becomes an exclusive assignment. We invite comment on all aspects of this proposal.

#### IV. SUMMARY

31. A reporting requirement should be eliminated if it unnecessarily burdens licensees,<sup>49</sup> particularly small businesses, while not conferring a public interest benefit sufficient to justify the burden.<sup>50</sup> The Paperwork Reduc-

tion Act (Act) was enacted,<sup>51</sup> among other reasons, to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons.<sup>52</sup> This legislation requires that the Office of Management and Budget not only oversee the review and approval of information collection requests, but direct and oversee the reduction of the paperwork burden.<sup>53</sup> In keeping with the mandate of the Act, we must evaluate the merit of all recordkeeping burdens on licensees.<sup>54</sup> Not only do we believe that our current submission requirements are unnecessary and burdensome, but we tentatively conclude that no purpose is served by mandating the retention of end user data in a licensee's station files. In conducting their business enterprises, licensees will maintain customer data that can be made available to the Commission if the need arises. Also, we tentatively conclude that requiring license modification whenever there is a change in the number of mobile units or pagers, even a change of one unit, is too onerous and thus should be modified.

#### V. CONCLUSION

32. Adoption of the above described proposals will assist in providing more efficient and effective licensing procedures thus serving the needs of the public, the industry and the Commission. We seek to maintain, retain, and adopt only regulations that serve significant purposes. We believe that this Notice serves to fulfill this important government policy.

#### Regulatory Flexibility Act

33. An Initial Regulatory Flexibility Analysis is contained in Appendix B to this Notice of Proposed Rule Making. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

<sup>48</sup> Section 90.159(a) provides that, under certain conditions, an applicant for a private land mobile station utilizing an already authorized facility may operate the radio station for a period of up to 180 days under a temporary permit.

<sup>49</sup> The end user submission requirements impose both a direct and in-direct financial burden on licensees. It is not only the filing fee charged by some frequency coordinators when submitting end user lists that incurs expense for licensees, but compilation and preparation costs in personnel terms are expended as well. License modification requirements also impose direct and indirect financial burdens on licensees because of FCC filing fees and personnel preparation costs.

<sup>50</sup> See, e.g., Memorandum Opinion and Order, PR Docket No. 18921, 48 Fed. Reg. 26620 (1983) (restrictions on securing of

packaged services and multiple licensing arrangements does not confer public interest benefit sufficient to justify burden).

<sup>51</sup> The Paperwork Reduction Act of 1980, as amended, 44 U.S.C. §§ 3501-3520.

<sup>52</sup> *Id.* § 3501.

<sup>53</sup> *Id.* § 3504. The Act established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs to administer the paperwork reduction functions. *Id.* § 3503. The Act also required that goals be set to reduce the then existing burdens of Federal collections of information. *Id.* § 3505.

<sup>54</sup> Each governmental agency must implement policies and guidelines with respect to, among other things, paperwork reduction. *Id.* § 3506(b)(6).

**Ex Parte Rules -Non-Restricted Proceeding**

34. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

**Comment Dates**

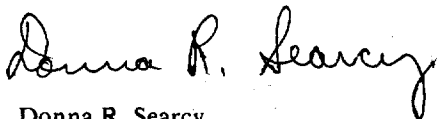
35. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **June 26, 1992**, and reply comments on or before **July 13, 1992**. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

**Legal Authority**

36. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

**Contact Person**

37. For further information concerning this proceeding, contact Freda Lippert Thyden, Private Radio Bureau, (202) 634-2443.

**FEDERAL COMMUNICATIONS COMMISSION**


Donna R. Searcy  
Secretary

**APPENDIX A**

47 C.F.R. Part 90 is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

**Authority:** Sections 4, 303, 332, 48 Stat., as amended, 1066, 1082; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. 47 C.F.R. § 90.135 is amended by revising paragraphs (a)(5) and (a)(8) to read as follows:

**§ 90.135 Modification of license.**

(a) \* \* \*

(5) Change in the location or number of base stations or fixed or control transmitters from that authorized; change the number of mobile transmitters for systems that are not licensed on exclusive assignments in the 470-512 MHz band or on conventional channels above 800 MHz; change

by 20 percent in the number of mobile transmitters from that authorized; or change in the area of mobile operations from that authorized.

\* \* \* \* \*

(8) Change of 35 percent in the number of paging receivers from that authorized for systems licensed on paging-only channels.

\* \* \* \* \*

3. 47 C.F.R. § 90.159 is amended by revising paragraph (c) to read as follows:

**§ 90.159 Temporary and conditional permits.**

\* \* \* \* \*

(c) An applicant proposing to operate an itinerant station, or an applicant seeking license modification solely for an increase in the number of mobile units, (except for systems on frequencies in the 470-512 MHz band or conventional channel assignments above 800 Mhz), or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station operating below 470 MHz or in the 929-930 MHz band, may operate the subject station during the pendency of the application for a period not to exceed 180 days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127. Conditional authority ceases immediately if the application is returned by the Commission because it is not acceptable for filing. All other categories of applications listed in 90.175(f) that do not require evidence of frequency coordination are excluded from the provisions of this rule section.

\* \* \* \* \*

4. 47 C.F.R. § 90.175 is amended by revising paragraph (f)(7) to read as follows:

**§ 90.175 Frequency coordination requirements.**

\* \* \* \* \*

(f) \* \* \*

(7) Applications for modification of license that involve a change in the number of mobile or paging transmitters from that authorized as required by § 90.135(a)(5) and (a)(8), provided that there is no change in the technical parameters (e.g., frequency, type of emission, power, antenna height, location or number of base stations or fixed or control transmitters, or area of mobile or paging operations) of the existing system, and the existing system is not licensed in the 470-512 MHz band or on 800 MHz conventional channels.

\* \* \* \* \*

5. 47 C.F.R. § 90.179 is revised by removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f), respectively.



**APPENDIX B****V. INITIAL REGULATORY FLEXIBILITY ANALYSIS****Reason for Action**

1. This rule making proceeding is initiated to review the type of end user information needed by both the Commission and frequency coordinators for systems where end users are not individually licensed.

**Objectives**

2. The Commission seeks to re-evaluate its end-user list and license modification requirements in light of current operations so that it can ensure that rules imposed on private land mobile applicants and licensees do not unnecessarily burden small business entities.

**Legal Basis**

3. The proposed action is authorized under Sections 4(i), 4(j), 301, 303(i), 303(r) and 331(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(g), 303(i), 303(r) and 332(a).

**Reporting, Recordkeeping and Other Compliance Requirements**

4. The proposed action would reduce the burden on applicants and licensees to prepare and submit end-user lists to the Commission and to relevant frequency coordinators. The proposed action also would make less burdensome license modification rules that provide information on channel usage for systems with end users that are not individually licensed.

**Federal Rules Which Overlap, Duplicate or Conflict With These Rules**

5. None.

**Description, Potential Impact, and Number of Small Entities Involved**

6. This action would be beneficial to small entities in that they would no longer be required to prepare and submit end-user lists to the Commission and frequency coordinators. Also, small entities would benefit because they would be required to modify their licenses on a less frequent basis than is currently the case.

**Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives**

7. None.